

WILLIAM F. TERHEYDEN, Bar No. 43940
BLANE MARIE MALL, Bar No. 238357
OLGA SAVAGE, Bar No. 252009
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108.2693
Telephone: 415.433.1940

Attorneys for Defendant
LAWSON ROOFING CO., INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TANICIA BENJAMIN,

Case No. CV 08-01909 SI

Plaintiff,

**DEFENDANT LAWSON ROOFING CO.,
INC.'S ANSWER TO PLAINTIFF'S
EMPLOYMENT DISCRIMINATION
COMPLAINT**

LAWSON ROOFING CO..

Defendant.

COMES NOW Defendant LAWSON ROOFING CO., INC. ("Defendant"), and for its Answer to the Employment Discrimination Complaint filed by Plaintiff Tanicia Benjamin ("Plaintiff") admits, denies and alleges as follows:

PARTIES

1. Answering Paragraph 1 of the Complaint, Defendant lacks sufficient information or belief to respond to Paragraph 1 and, on that basis, denies, generally and specifically, all allegations in Paragraph 1.

2. Answering Paragraph 2 of the Complaint, Defendant admits all allegations in Paragraph 2.

JURISDICTION

3. Answering Paragraph 3 of the Complaint, Defendant admits that Plaintiff purports to assert claims under Title VII of the Civil Rights Act of 1964 ("Title VII") for

1 employment discrimination but denies that Plaintiff has stated any valid claims for relief. Defendant
 2 admits that jurisdiction over Plaintiff's alleged claims is proper under 42 U.S.C. Section 2000e.
 3 Defendant admits that Plaintiff seeks equitable and other relief under 42 U.S.C. Section 2000e-5 but
 4 denies that Plaintiff is entitled to any type of relief.

5 **STATEMENT OF CLAIMS**

6 4. Answering Paragraph 4 of the Complaint, Defendant denies, generally and
 7 specifically, all allegations in Paragraph 4.

8 5. Answering Paragraph 5 of the Complaint, Defendant denies, generally and
 9 specifically, all allegations in Paragraph 5.

10 6. Answering Paragraph 6 of the Complaint, Defendant admits that Plaintiff
 11 worked as an Apprentice Roofer in Defendant's Commercial Roofing and Waterproofing
 12 Department in the summer and fall of 2005. Defendant admits, on information and belief, that
 13 Zeferino Munoz ("Munoz") exposed his penis in 2005. Defendant admits that Plaintiff made an oral
 14 complaint to Dan Siri on January 5, 2006. Defendant admits that Munoz was terminated for
 15 inappropriate conduct in January 2006, but denies that Plaintiff was sexually harassed. Defendant
 16 admits that, after investigating Plaintiff's complaint, it offered Plaintiff the opportunity to voluntarily
 17 transfer to Defendant's Coating Department if she wanted to do so and, after Plaintiff accepted this
 18 offer, that Defendant transferred Plaintiff to this department. Defendant denies that Plaintiff's hours
 19 were drastically reduced, but admits that Plaintiff worked fewer hours in 2006 than in 2005. Except
 20 for those allegations specifically admitted, Defendant denies, generally and specifically, all other
 21 allegations in Paragraph 6.

22 7. Answering Paragraph 7 of the Complaint, Defendant admits that Plaintiff
 23 purports that the alleged discrimination occurred on or about Fall of 2005 through January of 2006.
 24 Except for those allegations specifically admitted, Defendant denies, generally and specifically, all
 25 other allegations in Paragraph 7.

26 8. Answering Paragraph 8 of the Complaint, Defendant admits, on information
 27 and belief, that Plaintiff filed a charge with the Federal Equal Employment Opportunity Commission
 28 ("EEOC") on February 21, 2006, in which she alleged claims of discrimination against Defendant.

Except for those allegations specifically admitted, Defendant denies, generally and specifically, all other allegations in Paragraph 8.

9. Answering Paragraph 9 of the Complaint, Defendant admits, on information and belief, that the EEOC issued a Notice-of-Right-to-Sue Letter to Plaintiff on January 9, 2008. Defendant lacks sufficient information or belief to respond to all other allegations in Paragraph 9, and, on that basis, denies, generally and specifically, all other allegations in Paragraph 9.

DEMAND FOR JURY TRIAL

10. Answering Paragraph 10 of the Complaint, Defendant admits that Plaintiff demands a trial by jury for all claims for which a jury is permitted.

PRAYER FOR RELIEF

11. Answering Paragraph 11 of the Complaint, Defendant denies, generally and specifically, each and every allegation in Paragraph 11, and further denies that Plaintiff is entitled to any type of relief, including injunctive orders, punitive or other damages, costs and attorney fees.

AFFIRMATIVE DEFENSES

1. AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff has failed to state facts sufficient to state any cause of action against Defendant.

2. AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that the Complaint is barred, in whole or in part, by the applicable statute of limitations, including but not limited to, 42 U.S.C. §§ 2000e *et seq.*, or Plaintiff's failure to timely file a civil action under 42 U.S.C. § 2000e-5(f).

3. AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that the Complaint is barred, in whole or in part, by Plaintiff's failure to timely and completely exhaust the required administrative remedies.

4. AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that the Complaint is barred, in whole or in part, to the extent that it seeks relief for discrimination and/or unlawful employment practices under Title VII not like or reasonably related to the allegations in any timely charge filed by Plaintiff with the EEOC or any other governmental agency.

1 5. AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 2 alleges that the Complaint is barred, in whole or in part, by Plaintiff's failure to timely and
 3 completely exhaust the requisite contractual or internal remedies available to her before commencing
 4 this action, including, but not limited to, her remedies under the applicable collective bargaining
 5 agreement.

6 6. AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 7 alleges that it exercised reasonable care to prevent and promptly correct any harassing,
 8 discriminatory, retaliatory or otherwise unlawful behavior.

9 7. AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 10 alleges that the Complaint is barred, in whole or in part, by the doctrine of avoidable consequences,
 11 because Defendant took reasonable steps to prevent and correct workplace discrimination and
 12 harassment, Plaintiff unreasonably failed to use the preventative and corrective opportunities
 13 provided to employees by Defendant, and reasonable use of Defendant's procedures would have
 14 prevented at least some of the harm that the Plaintiff allegedly suffered, and that Plaintiff's recovery
 15 from Defendant, if any, must be denied or reduced accordingly.

16 8. AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 17 alleges that all actions taken toward Plaintiff were for legitimate, good-faith non-discriminatory and
 18 non-retaliatory reasons.

19 9. AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 20 alleges that the Complaint is barred, in whole or in part, because Plaintiff participated in and
 21 welcomed the conduct of which she now complains.

22 10. AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 23 alleges that assuming, *arguendo*, any employee or agent of Defendant engaged in any harassment or
 24 other unlawful conduct toward Plaintiff (which Defendant denies), that conduct was contrary to
 25 Defendant's express policies, occurred outside of the scope of any employment or agency
 26 relationship, and cannot be attributed to Defendant.

27 11. AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 28 Defendant alleges that, assuming *arguendo* any employee of Defendant engaged in any harassment

1 or other unlawful conduct toward Plaintiff (which Defendant denies), Defendant neither knew nor
 2 reasonably should have known of the unlawful conduct and did not authorize, ratify or consent to
 3 any unlawful conduct.

4 12. AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 5 alleges that, to the extent Plaintiff seeks a remedy for any alleged mental, emotional or physical
 6 injuries, illnesses or disabilities, Plaintiff's claims are preempted, in whole or in part, by the
 7 exclusive remedy provisions of the California Workers' Compensation Act, Labor Code Section
 8 3600, *et seq.*

9 13. AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 10 Defendant alleges that the Compliant is barred, in whole or in part, by the equitable doctrine of
 11 unclean hands.

12 14. AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 13 Defendant alleges that the Complaint is barred, in whole or in part, by the equitable doctrine of
 14 estoppel.

15 15. AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 16 alleges that the Complaint is barred, in whole or in part, by the equitable doctrine of waiver.

17 16. AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 18 Defendant alleges that the Complained is barred, in whole or in part, by the equitable doctrine of
 19 laches.

20 17. AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 21 Defendant alleges that Plaintiff is estopped from bringing this action and/or her potential damages
 22 must be limited under the doctrine of after-acquired evidence.

23 18. AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 24 Defendant alleges that Plaintiff has failed to state a claim for punitive or exemplary damages.

25 19. AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 26 Defendant alleges that it may not be liable for punitive damages because, at all relevant times,
 27 Defendant made bona fide efforts to prevent harassment and discrimination.

1 20. AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,
 2 Defendant alleges that it may not be liable for punitive damages because, at all relevant times,
 3 Defendant had a suitable anti-discrimination and harassment policy in effect. *Kolstad v. ADA*, 527
 4 U.S. 526 (1999).

5 21. AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,
 6 Defendant alleges that Plaintiff is not entitled to recover any punitive or exemplary damages as
 7 prayed for in the Complaint on the grounds that any award of punitive or exemplary damages in
 8 general and/or as applied to the facts of this specific action would violate Defendant's constitutional
 9 rights under provisions of the United States and California Constitutions, including, but not limited
 10 to, the equal protection and due process clauses of the Fifth and Fourteenth Amendments of the
 11 United States Constitution, the excessive fines and cruel and unusual punishment clauses of the
 12 Eighth Amendment of the United States Constitution and Article I, Sections 7 and 17 and Article IV,
 13 Section 16 of the California Constitution.

14 22. AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,
 15 Defendant alleges that Plaintiff has failed to state a claim for attorneys' fees and costs.

16 23. AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,
 17 Defendant alleges that Plaintiff has failed to state a claim for injunctive relief because Plaintiff has
 18 not suffered, and will not suffer, irreparable harm as a result of any of the alleged conduct and/or
 19 omissions of Defendant, nor is there any other threat of irreparable harm.

20 24. AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 21 Defendant alleges that the injuries and damages alleged in the Complaint were caused, in whole or in
 22 part, by Plaintiff's own acts or omissions or by the acts or omissions of persons or entities other than
 23 Defendant, and that Plaintiff's recovery from Defendant, if any, must be denied or reduced
 24 accordingly.

25 25. AS A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 26 Defendant alleges that if Plaintiff has obtained compensation from other sources for injuries alleged
 27 in the Complaint, Plaintiff's recovery from Defendant, if any, must be denied or reduced
 28 accordingly.

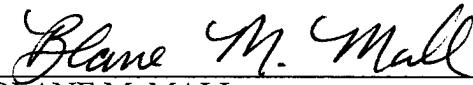
1 26. AS A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 2 Defendant alleges that Plaintiff failed to mitigate her alleged damages.

3 27. AS A TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
 4 Defendant alleges that it does not presently know all of the facts concerning the allegations in the
 5 Complaint sufficiently to state all affirmative defenses at this time, and reserves the right to seek
 6 leave to amend this Answer should it later discover facts to support additional affirmative defenses.

7 WHEREFORE, Defendant prays:

- 8 1. That Plaintiff take nothing by reason of the Complaint;
- 9 2. That judgment be entered in favor of Defendant, and against Plaintiff, and that
 10 the Complaint be dismissed with prejudice;
- 11 3. That Defendant be awarded its attorney's fees and costs of suit incurred
 12 herein; and
- 13 4. For such other and further relief as the Court may deem just and proper.

14 Dated: May 22, 2008

15 
 16 BLANE M. MALL
 17 LITTLER MENDELSON
 18 A Professional Corporation
 19 Attorneys for Defendant
 20 LAWSON ROOFING CO., INC.

21 Firmwide:85296673.2 051068.1002

PROOF OF SERVICE BY MAIL

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108-2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On May 22, 2008, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

DEFENDANT LAWSON ROOFING CO., INC.'S ANSWER TO
PLAINTIFF'S EMPLOYMENT DISCRIMINATION COMPLAINT

in a sealed envelope, postage fully paid, addressed as follows:

Tanicia Benjamin
3023 Albany Avenue, Apt. 104
Davis, CA 95616

Plaintiff In Pro Per

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 22, 2008, at San Francisco, California.

Barbra K. Kearney